IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.4.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE R.SUDHAKAR

Writ Petition No.11763 of 2006
in WP.MP.No.13381 of 2006

G.Nagarajan .. Petitioner

Vs.

1. The Union of India rep. by
the Commissioner of Central Excise
6/7, ATD Street, Race Course Road
Coimbatore 641 018.

2. The Deputy Commissioner of Central Excise
Coimbatore IV Division, Coimbatore 642 018.

3. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai 600 104. .. Respondents

Petition under Article 226 of the Constitution of India praying for the relief as stated therein.

For Petitioner : Ms.Rathina Ashokan

O R D E R

(Order of the Court was made by
P.D.DINAKARAN,J.)

The writ petition is directed against the order dated 14.3.2006 made in O.A.No.791 of 2005 on the file of the third respondent dismissing the said O.A. and refusing to stay the departmental proceedings initiated against the petitioner vide memorandum dated 1.9.2005, till the conclusion of the criminal case pending against the petitioner in C.C.No.3 of 2005 on the file of Principal Special Judge for CBI cases, for the offence punishable under Section 120-B, IPC read with Section 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as the "PC Act").

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2.1. In brief, the petitioner was working as Superintendent, Customs, Tirupur, on deputation by the Central Excise Department. A trap was decided to be laid on the petitioner on 5.7.2004 based on a complaint lodged by one Selvaraj. The conversation between the said Selvaraj and the petitioner reveals that the petitioner demanded illegal gratification of Rs.25,000/- from Selvaraj for clearing export consignment made under shipping bill bearing serial No.14624 dated 26.6.2004. Accordingly, the trap was executed and the petitioner was trapped. A criminal case was initiated in C.C.No.3 of 2005 for the offences referred to above.

2.2. Pending the above criminal case, the first respondent also initiated departmental proceedings against the petitioner for having committed a gross misconduct and for the failure to discharge the duties of a public servant on 5.7.2004 in connection with the clearance of export consignment, in contravention of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

3. The core contention of the learned counsel for the petitioner before the Tribunal as well as before this Court is that if the departmental proceedings is permitted to be proceeded, he would be compelled to disclose his evidence in the departmental enquiry and the same would affect the defence in the trial and also cause prejudice.

4.1. The Tribunal, in its well considered judgment dated 14.3.2006, has observed that even though both the criminal case and the departmental proceedings initiated against the petitioner referred to above arise out of the same set of facts, the charge in the criminal case pending before the criminal court is for the offences punishable under Section 120-B, IPC read with Section 7, 13 (2) and 13(1)(d) of the PC Act, whereas the allegation alleged in the departmental proceedings is with regard to the contravention of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964. Thus, while the criminal case is with reference to the demand of illegal gratification and acceptance of the same, the departmental proceedings was initiated for the alleged misconduct on the part of the petitioner, viz. failure to discharge his duties to the utmost integrity and for having committed an act of unbecoming of a Government servant.

4.2. Even though the learned counsel for the petitioner made an attempt to elaborate his contention in this regard, in our considered opinion, it may not be proper for us to go into those allegations which would otherwise affect the departmental proceedings and also cause prejudice to the petitioner himself.

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4.3. In the circumstances, suffice it to observe that we are satisfied with the reasons that weighed the Tribunal in its order dated 14.3.2006, refusing to grant stay of the recovery proceedings which are based on the ratio laid down by the Apex Court in the following decisions:

(a) In STATE OF RAJASTAN v. B.K.MEENA & ORS. (1996 SCC (l&s) 1455), it is held as follows:

> "There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Cod, if any) are established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

(b) In CAPT.M. PAUL ANTHONY v. BHARAT GOLD MINES LTD. & ANOTHER (1999 (11) CTC 579), it is held as under:

> "The conclusions which are deducible from various decisions of this Court referred to above are:
>
> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
>
> (iii) whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the

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nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

(c) In STATE BANK OF INDIA & ORS. v. R.B. SHARMA (2005 (3) L.W. 71) it is held that there was no bar to proceed simultaneously with departmental enquiry and trial of criminal case, unless the charge in the criminal trial is of a grave nature involving complicated questions of fact and law.

(d) In DEPOT MANAGER, A.P. STATE ROAD TRANSPORT CORPORATION v. MOHD. YOUSUF MIYA & ORS. (1997 SCC (l&s) 548), it is held that what is required to be seen is whether the departmental enquiry should seriously prejudice the delinquent in his defence in the trial in the criminal case and it is always the question of fact to be considered in each case depending on its own facts and circumstances.

(e) In M.SUNDERAMURTHY v. STATE OF TAMIL NADU (AIR 1990 SC 1269), it is held that unless the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

(f) In C.L.EMDEN v. STATE OF U.P. (AIR 1960 SC 548), while dealing with Section 4(1) of the P.C. Act, it is held that what the prosecution has to prove before asking the court to raise a presumption against an accused person is that the accused person has received a gratification other than legal remuneration. If it is shown that the accused received the said amount and the said amount was not legal remuneration, then the condition prescribed by the section is satisfied.

(g) In B.HANUMANTHA RAO v. STATE OF A.P. (AIR 1992 SC 1201), it is held that once the amount is found in possession of the accused,

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the burden lies on him to explain the circumstances and prove his innocence as contemplated under Rules of Corruption Act.

(h) In T.SHANKAR PRASAD v. STATE OF U.P. (2004 (3) SCC 753), it is held that Section 20(1) of the P.C.Act in essence and substance is the same as Section 4(1) of the previous Act of 1947. The only condition for drawing legal conclusion under Section 20 during trial is that, it should be proved that the accused has accepted or agreed to accept any gratification and that unless the presumption is disproved of or dispelled or rebutted, the Court can treat the presumption as tantamounting to proof.

(i) In STATE OF A.P. v. C.UMA MAHESWARA RAO (2004 (4) SCC 399), it is held that presumption could be final if it remains undisturbed later. The presumption in law of evidence is a rule indicating the stage of shifting the burden of proof.

4.4. In fine, what weighed the Tribunal is that in the departmental proceedings, the department is not only bound to take disciplinary action against the delinquent, but also to keep administrative machinery unsullied by getting rid of bad elements, or otherwise it would be difficult to maintain a clean administration. Thus the Tribunal has rightly rejected the contention of the learned counsel for the petitioner that the petitioner would be compelled to disclose his evidence, if the departmental proceedings is permitted to go on and that it would also prejudice his defence in the trial, on the ground that as per Section 20 of the PC Act, the burden of proof is shifted on the petitioner when it is shown that the petitioner has accepted or obtained or agreed to accept or obtain gratification other than legal remuneration as a motive or reward.

5.1. In this regard, it is apt to refer Section 20(1) of the PC Act, which reads as follows:

> "Section 20:
>
> Presumption where public servant accepts gratification other than legal remuneration.-
>
> (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13, it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be,

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as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

5.2. When Section 20(1) deals with legal presumption it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused had accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence, vide M.Narsinga Rao v. State of A.P. ((2001) 1 SCC 691).

5.3. The only condition for drawing legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. But the section does not say that the said condition should be satisfied only by direct evidence. When money was recovered from the pocket of one of the accused persons, a presumption under Section 20 of the Act is obligatory, vide T.Shankar Prasad v. State of A.P. ((2004) 3 SCC 753).

5.4. When the expression "shall be presumed" is employed in Section 20(1) of the Act, it must have the same import of compulsion. Therefore, the same has to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act, etc. if the condition envisaged in the former part of the section is satisfied. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification, vide State of A.P. v. C.Uma Maheswara Rao ((2004) 4 SCC 399).

5.5. In view of the above settled proposition, the question of prejudice caused to the petitioner due to the disclosure of the defence, as rightly held by the Tribunal, would not arise. Therefore, in complete agreement with the reasons that weighed the Tribunal and finding no merits in the writ petition, the same is dismissed. WPMP No.13381 of 2006 is also dismissed.

kpl

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Commissioner of Central Excise
   Union of India
   6/7, ATD Street, Race Course Road
   Coimbatore 641 018.

2. The Deputy Commissioner of Central Excise
   Coimbatore IV Division, Coimbatore 642 018.

3. The Registrar
   Central Administrative Tribunal
   Madras Bench, Chennai 600 104.

+ one cc to Ms.Rathina Asohan, Advocate Sr.No.22080.

PLI (CO)
RSM/23.6.2006

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